

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 6313
BILL NUMBER: HB 1234

NOTE PREPARED: Jan 11, 2012
BILL AMENDED:

SUBJECT: Tort claims.

FIRST AUTHOR: Rep. DeLaney
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill increases the liability cap in the tort claims act to \$1,300,000 per person and \$22,000,000 per occurrence for causes of action accruing on or after July 1, 2011.

Effective Date: July 1, 2011 (retroactive).

Explanation of State Expenditures: Any added expenditures for the state would depend on the number of persons who are injured or killed and who either themselves, or through an estate, successfully sue the state for tort claim awards. The amount of payments will also depend on each victim's age, education, earnings potential, number of dependents, and the extent of injuries and length of hospitalization.

Because deaths and injuries and their associated costs are difficult to predict, the added costs for this bill are shown with a high and low estimate.

Added Payments (in \$M) for Wrongful Death and Bodily Injury Cases				
	2012	2013	2014	2015
Low Estimate	\$10.74	\$1.26	\$1.26	\$1.26
High Estimate	\$20.86	\$2.60	\$2.60	\$2.60

The costs for FY 2012 are assumed to be significantly higher than FY 2013 through 2015 because an event like the stage collapse at the State Fair is not assumed to occur within the next four years. The estimated

payout for FY 2012 is explained in more detail in a separate section.

To estimate the payouts in years between 2013 and 2015, LSA used the following steps:

1. The added expenditures for wrongful death and personal injuries are based on past tort payments for wrongful deaths and injuries between CY 2001 and CY 2011.
2. The number of occurrences each year are based on the average and median reported between 2002 and 2010. CY 2001 is not included because of the small number of wrongful deaths and bodily injuries that were reported that year. CY 2011 is not included because of the unusual occurrence of the stage collapse at the Indiana State Fair in August 2011. (See *Estimation for FY 2012* for more details.)
3. In the data set provided by the Office of the Attorney General, there were 76 wrongful death occurrences and 316 bodily injury cases. LSA adjusted each payment as a percentage of the statutory cap that existed that year. To estimate the adjusted payments, this percentage is then multiplied by the new cap of \$1.3 M.
4. Both an average and median payment was calculated for wrongful death and bodily injury payments for actual and adjusted payments. All payments for claims between CY 2001 and 2011 are included in this set. These averages are multiplied by the average and median expected yearly occurrences to estimate the added costs for each year.

Estimated New Payout (in \$M) for Tort Payments at \$1.3 M						
Wrongful Death	Low Estimate			High Estimate		
Adjusted Payment Per Death	\$0.26			\$0.36		
Yearly Occurrences	<u>7</u>			<u>8</u>		
Yearly Payout (new cap)		\$1.82			\$2.88	
Reported Payment Per Death	\$0.10			\$0.14		
Yearly Occurrences	<u>7</u>			<u>8</u>		
Yearly Payout (current cap)		<u>\$0.70</u>			<u>\$1.12</u>	
Added Payout			\$1.12			\$1.76
Bodily Injuries						
Adjusted Payment Per Bodily Injury	\$0.013			\$0.067		
Yearly Occurrences	<u>20</u>			<u>24</u>		
Yearly Payout (new cap)		\$0.26			\$1.61	
Reported Payment Per Bodily Injury	\$0.006			\$0.032		
Yearly Occurrences	<u>20</u>			<u>24</u>		
Yearly Payout (current cap)		<u>\$0.12</u>			<u>\$0.77</u>	
Added Payout			\$0.14			\$0.84
Total Added Payout			<u>\$1.26</u>			<u>\$2.60</u>

Estimation for FY 2012 – Since this bill is retroactive to July 1, 2011, it would increase the payments for claims filed for wrongful death and bodily injury occurring after July 1, 2011.

The single occurrence that will most substantially affect tort payments will be the event when an outdoor stage collapsed at the Indiana State Fair on August 13, 2011, at an outdoor concert event. At this event, 7 persons were killed and 58 persons were seriously injured. After the occurrence, 114 individuals or their estates filed 101 original tort claims (some of them filing jointly) against the state.

The added expenditures for tort claims payments are difficult to predict, but an added payout would likely occur if more parties file injury claims (persons who wish to file tort claims have until May 9, 2012, or 270 days after the date of injury to file a claim) and if parties settling claims with the state file additional claims because the cap was lifted. The Office of the Attorney General indicates that persons accepting the settlement offer may still file additional tort claims if the legislature increases the cap. The amount of the payments would be determined by either the AG's office or a court-appointed special master.

Low and high estimates are provided below for FY 2012.

1. In the low estimate, the payouts for torts against the State Fair Commission for bodily injury were adjusted based on the percentage of the payout to the current \$700,000 cap. For wrongful death cases involving the State Fair, LSA assumed that all estates will receive \$1.3 M.
2. For the high estimate, LSA assumed that payouts will meet the \$22 M cap.
3. For wrongful death and bodily injury claims against other state agencies, LSA adjusted the payments based on each claim's percentage of the \$700,000 cap and multiplied by \$1.3 M.

Estimated Tort Payout (in \$M) for July 1 - Dec 31, 2011			
Low Estimate	Other Agencies	State Fair	Totals
Adjusted Payouts	\$4.18	\$12.55	\$16.73
Actual Payouts	<u>\$2.25</u>	<u>\$4.37</u>	<u>\$6.62</u>
Difference	\$1.93	\$8.18	\$10.11
High Estimate	Other Agencies	State Fair	Totals
Adjusted Payouts	\$4.18	\$22.00	\$26.18
Actual Payouts	<u>\$2.25</u>	<u>\$4.37</u>	<u>\$6.62</u>
Difference	<u>\$1.93</u>	<u>\$17.63</u>	\$19.56

For the second half of FY 2012, the period between January 1 and June 30, LSA assumed that the number of occurrences involving injury or death for which the state of Indiana will be a defendant will be at the same rate as those occurring between FY 2013 and FY 2015.

Estimated Payout for FY 2012					
	July 1 – Dec 31		Jan 1 – June 30*		Annual
Low Estimate	\$10.11	+	\$0.63	=	\$10.74
High Estimate	\$19.56	+	\$1.30	=	\$20.86
* These estimates are half of the projected added payout for 2013 through 2015					

Background– The Office of the Attorney General provided information on 392 tort payments between 2001 and 2011. The following table shows the payments made each year between 2001 and 2011.

Number of Tort Claim Payments By CY for Bodily Injury and Wrongful Death														
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total	Mean	Median
Bodily Injury	1	9	15	17	26	20	48	33	10	35	102	316	24	20
Wrongful Death	2	2	0	14	4	9	14	11	2	3	15	76	7	7
Grand Total	3	11	15	31	30	29	62	44	12	38	117	392	31	27

Tort Payments by CY and Tort Caps

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Bodily Injury	\$0.00	\$0.01	\$0.06	\$0.08	\$0.49	\$0.17	\$1.13	\$0.64	\$0.15	\$1.91	\$5.41
Wrongful Death	\$0.55	\$0.10	\$0	\$0.76	\$0.47	\$0.68	\$2.07	\$3.00	\$0.01	\$1.07	\$2.20
Grand Total	\$0.55	\$0.11	\$0.06	\$0.84	\$0.96	\$0.85	\$3.20	\$3.64	\$0.16	\$2.98	\$7.61
Tort Caps	\$300,000					\$500,000	\$700,000				

Claims Paid for Wrongful Death and Bodily Injury Between CY 2001 and 2011				
Claim Type	Number of Claims	Sum of Claims Paid	Average of Claims Paid	Median of Claims Paid
Bodily Injury	316	\$10,053,200	\$31,814	\$6,032
Wrongful Death	76	\$10,911,689	\$143,575	\$100,000

Explanation of State Revenues:

Explanation of Local Expenditures: This bill could increase the per person damage awards that local entities would be required to pay as a result of a successful lawsuit. Under current law, damage awards cannot exceed \$700,000 for the injury to, or death of, one person in any single occurrence. This bill will raise the maximum award for the injury or death to one person to \$1.3 M retroactive to July 1, 2011. Consequently, payments made by local units of government for events occurring after July 1, 2011, causing death or bodily injury for which the local unit was determined to be liable might have to be reviewed and payments increased. It also increases the total liability per occurrence to \$22 M.

Total tort settlements for local units are not known. The total additional cost to local units is unknown and subject to judicial action. This provision may also increase the insurance premiums paid by local entities.

Explanation of Local Revenues:

State Agencies Affected: Office of the Attorney General.

Local Agencies Affected: Counties and municipalities.

Information Sources: Office of the Attorney General.

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